The Autorité de la concurrence hands down fine worth a total of up to 58.3 million euros to the main fruit-compote manufacturers for pricing agreement and market sharing

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Background

The Autorité publishes today a decision by which it fines a national cartel between the main fruit-compote manufacturers, which lasted from October 2010 to January 2014. More specifically, the agreement concerned:

- products sold to food retailers under retailers' own-brand labels
- products sold to food service distributors ("out-of-home catering").

The companies fined are: Materne, Andros, Conserves France, Délis/Vergers de Châteaubourg, Charles Faraud/Charles & Alice, as well as Valade. Coroos, which also participated in the infringement, reported the agreement as part of the leniency procedure. This approach led the Autorité to conduct an in-depth investigation. The Coroos company was able, in exchange for its cooperation during the investigation, to benefit from a full exemption from fines.

The fined companies represented, throughout the infringement period, almost the entire market for compotes sold under retailers' own-brand label (90%) and out-of-home catering (100%).

Companies	Fines

Coroos	€0
Conserves France jointly and severally liable with Conserve Italia	€1,967,000
Valade jointly and severally liable with Financière Lubersac	€2,801,000
Délis et Vergers de Chateaubourg jointly and severally liable with Groupe Lactalis et B.S.A	€9,466,000
Materne jointly and severally liable with MBMA et MBMA Holding	€13,585,000
Andros jointly and severally liable with Andros et Cie	€14,106,000
Charles Faraud et Charles & Alice jointly and severally liable with CAI développement	€16,358,000

Total	€58,283,000

The compotes market

The main outlet for compote producers is the supermarket distribution channel. Some of the products are sold under so-called "premium" or national brands (for example the Materne, Pom'Potes, Andros, St-Mamet, Charles & Alice brands). Another part of the products is sold under retailers' own brand label, i.e. the brands developed by the food retailer brands, whose products are manufactured by the companies of the sector. In practice, mass retail brands usually organise tenders to select suppliers who will manufacture their compote-based products and on which they will then affix their own brands.

The second distribution channel for the production of compotes is that of sales to distributors specializing in "out-of-home catering", such as Sodexo, Compass, Pomona, Pro A Pro or Transgourmet. These distributors also generally obtain supplies from manufacturers through tenders and then supply actors of the catering service (company canteens, etc.), hotels/restaurants, hospitals and other accommodation facility (schools, retirement homes, etc.).

At the origin of the case: a request for leniency presented by Coroos in 2014 and dawn raids carried out in September 2015

The cartel was brought to the Autorité de la concurrence in early 2014 by the companies from the Dutch group Coroos, which applied for leniency. This

procedure enables companies which took part in a cartel to reveal its existence to the Autorité and to benefit, under specific conditions, from a total or partial exemption of fine, depending on the order in which they refered the case to the Autorité. (*to learn more about the leniency procedure, click here (in French)*). On this basis, the companies from the group benefited from a total fine exemption, in regards to their cooperation throughout the investigation.

The dawn raids carried out in September 2015 by the Investigation services of the Autorité de la concurrence in France and in the Netherlands with the cooperation of the Dutch competition authority (ACM) (*see the press release)* led to finding extensive evidence, which completed the evidence broight by the leniency applicant.

Operating as a network enables a better efficiency in the implementation of competition law

The European Competition Network (ECN) is an integrated and reinforced cooperation network between national competition authorities from the European Union and the European Commission. Within the network, competition authorities can for instance seek the support of their counterparts to carry joint dawn raids and cooperate on cases (see Article 22 paragraph 1 of the Regulation 1/2003).

Fined practices

In 2010, Materne, Andros, Conserves France, Délis SA, SAS Vergers de Châteaubourg, Charles Faraud, Charles & Alice, Valade and Coroos Conserven BV decided to implement a comprehensive plan aimed at:

- Raising the selling prices of compotes to retailers' own-brands and out-of-home catering clients and to coordinate on the amount of the price increase.
- Agreeing on a common discourse justifying these price increases
- Sharing the volumes and clients

Market players justified the implementation of the cartel by an adverse economic situation, due to the increase of the cost of raw material and packaging, and by the increasing pressure exerted by buyers (mass retail and food service distributors), in the framework of call for tenders or as part of OTC trades. The behaviour of Coroos, a Dutch manufacturer which initially aimed for an agressive pricing policy, would also have been perceived by the historical market players as a threat to their respective positions.

Investigation established that the companies at stake multipled multi- and bilateral contacts during meetings, encounters, mail exchanges and calls.

The operation of the cartel was secret and quite sophisticated: some actors used dedicated cellphones, used specifically for the cartel, or exchanged via dedicated email boxes. Most of the meetings were held not in professional premises but rather in hotels and restaurants in Paris and in mainland France, such as Concorde Opéra, the Novotel from the Gare de Lyon, Parisian restaurant Visconti, the Starbucks at St Lazare, the Novotel of Lyon Gerland or the one in Lille.

By way of illustration, among the evidence in the case, a presentation document can be found. Seized at Materne, it acted as a discussion point during a plenary meeting from the cartel on 5 October 2010. This PowerPoint, named « P&L » (« Profit & Loss »), presents the goals of the participants from 2010 and 2011 in terms of price and profitability. It draws up the list of call for tenders – ongoing or future-, with the projections for the market share distribution. It points out the markets with « negative or low profitability» which require, according to the cartel participants, a price increase.

It is stated that it should « cover all the cost price increases of the products and to enhance the profitability of all the market ».

The implementation of commun goals involved the distribution of call for tenders organized by the mass retail as well as the ones from food service distributors ("out-of-home catering"). Participants to the cartel also planned compensations to correct the potential volume gains or losses affecting one manufacturer or another, if they were not going the way it was previously planned.

For example, during the meeting of 3 September 2013, compensations and distribution of tonnage and markets were discussed, Andros had for instance to « give volume back » to others (as far as it had earned more than planned in 2010).) and St-Mamet « looking for 1500 tonnes ».

Very serious infringements

Horizontal agreements (i.e.; between direct competitors on a same market), consist in secretly agreeing on prices and volums, represent, by their very nature, the most serious infringements of competition law.

In this case, the cartel, which involved the main manufacturers of compotes sold to food retailers under retailers' own-brand labels and to food service distributors ("out-of-home catering"), was of national scale and involved consumer goods (fruit mash in cups and pouches). The cartel covered a very important part of the market (90 % on average for retailers' own-brand labels and 100 % for food service distributors), which deprived the call for tenders organizers of the possibility to introduce competition and get the best prices. Competitors aimed at removing incertainty – on the competitors' behaviours, price evolution- which caracterize a fully competitive market.

The Autorité, after examining all the facts of the case, evaulated that fines for a total amount of 58 283 000 euros should be imposed to the companies at stake. Coroos, considering its cooperation in the leniency procedure, was exempted from any financial penalty.

The Autorité found aggravating circumstances against Materne, taking into consideration the fact that the the company played a very active role in organizing the cartel. Thus, for instance, Materne :

- Acted as a intermediary between all participants. During a bilateral meeting with Coroos in September 2012, Materne gave an order of magnitude of price increase by indicating that it would send new prices on 1 October 2012, with an increase of 15 to 18 centimes per kg and that Andros would raise its price by 15 % ; in July 2013, Materne sent an email to Coroos with the prices that Andros had send to it ;

- Drafted the « *P&L November 2010* » and « *P&L 2* » documents, which served as supports for the first three multilateral meetinfs during which the parties determined their extensive plan;

- Booked the rooms for all multilateral meetings retraced during the investigation.

In order to guarantee that the sanctions were set a dissuasive level, the Autorité also increased the fine against Délis and Vergers de Châteaubourg (owned by Lactalis), Andros (owned by Andros et Cie) and Conserves France (owned by Conserve Italia Societa Cooperativa Agricola), taking into consideration that the four companies were owned by groups with a strong economic power and important ressources.

Finally, under mitigating circumstances, it reduced the fine imposed to Andros, noting that the company, « perturbed » the functioning of the cartel by acting as a « maverick » (meaning that it still caried an aggressive commercial policy to win market share).

What's the leniency procedure?

The leniency procedure enables companies which are participating or participated in a cartel to reveal its existence to the Autorité et to benefit, under certain circumstances, from a partial or total exemption of the fine, depending on the order in which they refered the case to the Autorité, on the added value of the evidence brought forward and their cooperation during the investigation.

Most of the cartels were dismantled by the Autorité through the leniency procedure.

MAJOR DISMANTLED CARTELS REGARDING « DAILY » PRODUCTS

14-D-19	12/18/2014	Cleaning and Hygiene Products	€951,2M
11-D-17	12/08/2011	Laundry detergents	€367,9M
17-D-20	10/18/2017	Floor Coverings Sector	€302M
12-D-09	03/13/2012	Packaged flour	€242,4M

15-D-03	03/11/2015	Dairy products	€192,7M
18-D-24	12/05/2018	White goods	€189M
19-D-24	12/17/2019	Compotes	€58,3M

19-D-24 OF 17 DECEMBER 2019

regarding practices implemented in the sector of fruits sold in cups and pouches

Read the decision

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